

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, et al.,

Plaintiffs,

-against-

WENDY EBER, in her individual  
capacity and as Executrix u/w/o LESTER EBER, et al.,

Defendants.

16-cv-9517(LAK)

**[Plaintiffs' Defendants' Proposed] ORDER**

WHEREAS, a trial of this matter was held from September 14, 2021, through September 22, 2021, and at the conclusion, the Court reserved decision and directed the parties to file post-trial briefs along with proposed findings of fact and conclusions of law;

WHEREAS, the Court entered temporary injunctive relief, orally on the record for a period of 14 days and extended ~~itsame~~ for an additional period of —7 days;

IT IS NOW ORDERED that the following restraints shall remain in place pending a final determination by the Court of the trial of this action and for seven (7) days thereafter, absent prior written approval of the Court on notice to the Plaintiffs:

Defendants Wendy Eber (in her individual capacity, in her capacity of Execut~~orix~~ of the Estate of Lester Eber, and in her capacity as officer, director, shareholder, or member of any of the entity Defendants) and Alexbay, LLC, and the Nominal Defendants, are enjoined from selling, transferring, distributing, ~~encumbering (including without limitation~~ granting any lien or security interest), ~~of any kind in or on,~~ or otherwise disposing of any ~~equity~~ shares or membership interest in, or assets of, or belonging to, directly or indirectly, Defendant Alexbay, LLC, or any

Nominal Defendant ~~or any of their affiliates~~, or causing any other Nominal Defendant ~~or its affiliate~~ to dispose of such assets, other than in the ordinary course of business (for the avoidance of doubt, any payments of bonuses to Wendy Eber ~~or~~ and distributions to equity holders, other than minimum tax distributions as required under existing governing documents, would constitute transactions outside the ordinary course of business); and

~~IT IS FURTHER ORDERED that (a) any request to exclude a particular transaction prohibited by this Order shall be submitted by letter to this Court and Plaintiffs, and (b) this Order shall not prohibit transactions in direct connection with Eber CT's Amended and Restated Credit Agreement dated as of February 24, 2017, as amended, provided that any such transaction that would otherwise violate this Order but for this exception must be disclosed to Plaintiffs in writing (in sufficient detail for Plaintiffs to understand the nature, amount, and parties to such transaction, including draft transaction documents if available) as soon as practicable after deciding to pursue such transaction, but no later than at least 48 hours in advance, so that Plaintiffs have an opportunity to seek further relief from this Court.~~

IT IS FURTHER ORDERED that the Defendants and Nominal Defendants shall, no later than October 26, 2021<sup>2</sup>, file with the Court a ~~sworn declaration~~ statement disclosing whether ~~there have been~~ they have sold, transferred, granted a security interest or lien of any kind in or on, or caused any other disposition of any transactions shares of stock or membership interest of Defendant Alexbay, LLC or any Nominal Defendant within one year prior to the date of this Order, ~~that would have violated this Order if it had been in effect at the time, and,~~ and if so, identifying and describing any such ~~transactions. Any documentation of such transactions shall be produced to Plaintiffs at the time of the disclosure. This disclosure shall include any~~

~~transactions documented, in whole or in part, within the past year, without regard to any effective date (e.g., “as of”) applied to the transaction or any component thereof: transaction(s).~~

IT IS FURTHER ORDERED that the foregoing provisions of this Stipulation and Order do not apply to Eber-CT’s Amended and Restated Credit Agreement dated as of February 24, 2017, as amended, or to Canandaigua National Bank.

~~SO ORDERED~~

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Honorable Lewis A. Kaplan  
United States District Judge